

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SKYLINE POTATO COMPANY, INC.

Plaintiff,

v.

No. 10-CV-698 JB-RHS

**TAN-O-ON MARKETING, INC., d/b/a
TMI; GERALD R. ANDERSON;
JULIE A. ANDERSON,**

Defendants-Third-Party Plaintiffs,

v.

**HI-LAND POTATO COMPANY, INC.;;
And CARL WORLEY,**

Third-Party Defendants.

**THIRD-PARTY DEFENDANTS' ANSWER
TO THIRD PARTY COMPLAINT FOR FRAUD**

COMES NOW Third-Party Defendants Hi-Land Potato Company, Inc. and Carl Worley, by and through their attorneys, Youtz & Valdez, P.C. (Marianne Bowers, Shane Youtz), and hereby answers the Third-Party Complaint as follows.

1. Third-Party Defendants admit the allegations of Paragraph No. 1 of the Third-Party Complaint.
2. Third-Party Defendants deny the allegations of Paragraph 2 of the Third-Party Complaint.
3. Third-Party Defendants are without sufficient information to admit or deny the allegation in Paragraph 3 of the Third-Party Complaint that Third-Party Claimants Gerald and Julie

Anderson are being accused of nonpayment of PACA orders for shipping perishable goods and, therefore, deny the same. The remaining allegations of Paragraph 3 of the Third-Party Complaint are also denied.

4. Third-Party Defendants deny the allegations of Paragraph 4 of the Third-Party Complaint.
5. Third-Party Defendants are without sufficient information to admit or deny the allegations in the first sentence of Paragraph 5 of the Third-Party Complaint and, therefore, deny the same. The remaining allegations of Paragraph 5 of the Third-Party Complaint are also denied.
6. Third-Party Defendants deny the allegations of Paragraphs 6 and 7 of the Third-Party Complaint.
7. In response to Paragraph 8 of the Third-Party Complaint, Defendants deny that Third-Party Claimants are entitled to indemnification under any theory of the law. The remaining allegations of Paragraph 8 of the Third-Party Complaint are denied.
8. Third-Party Defendants deny the allegations of Paragraph 9 of the Third-Party Complaint and deny the relief requested in Paragraph 9 of the Third-Party Complaint.

AFFIRMATIVE DEFENSES

1. Third-Party Claimants have failed to state a claim upon which relief can be granted.
2. Third-Party Claimants have failed to plead allegations of fraud with the requisite specificity and therefore have failed to state a claim upon which relief can be granted.

3. Third-Party Claimants are barred from recovery due to their failure to comply with their obligations under the Perishable Agricultural Commodities Act (PACA), 7 U.S.C. § 499a *et seq.*
4. Third-Party Claimants are equitably estopped from pursuing their claims against Third-Party Defendants.
5. Third-Party Claimants' claims are barred by the doctrines of waiver, estoppel and laches.
6. Third-Party Claimants claims are barred by the doctrine of unclean hands.
7. Third-Party Claimants' claims are barred by the doctrine of accord and satisfaction.
8. Third-Party Claimaints are barred from recovery due to fraud, illegality and prior payment.

Dated: April 1, 2011

Respectfully Submitted,

YOUTZ & VALDEZ, P.C.

/s/ Marianne Bowers

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I hereby certify that a true and correct copy of the foregoing pleading was filed electronically and served via electronic notification through the CM/ECF system on all registered parties to action this 1st day of April, 2011.

/s/ Marianne Bowers
Marianne Bowers